



Agenda Date: 05/16/06
Agenda Item: 3 ^A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

CABLE TELEVISION

IN THE MATTER OF THE PETITION OF COMCAST OF)
CENTRAL NEW JERSEY, LLC FOR ACCESS TO)
CERTAIN PREMISES KNOWN AS "MEWS AT)
PRINCETON JUNCTION," LOCATED IN THE)
TOWNSHIP OF WEST WINDSOR, COUNTY OF)
MERCER, STATE OF NEW JERSEY .)

ORDER REJECTING
INITIAL DECISION

BPU DOCKET NO. CE04111461
OAL DOCKET NO. CTV 2852-05

SERVICE LIST ATTACHED

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board") and its Office of Cable Television ("OCTV"), pursuant to N.J.S.A. 48:5A-1 et seq., have been granted general supervision and regulation of and jurisdiction and control over all cable television systems which operate within the State of New Jersey, subject only to the limitations of federal law. Pursuant to this authority, the within matter was opened to the Board by the filing by Comcast of Central New Jersey, LLC ("Comcast"), on November 24, 2004, of a petition for temporary and emergent relief and a Verified Complaint, seeking immediate access to a multifamily housing complex currently under construction, known as the Mews at Princeton Junction ("Mews") in West Windsor, New Jersey, for the purpose of installing Comcast's equipment and facilities ("plant") for its use in providing cable television service.

Comcast's petition sought the opportunity to install plant within the Mews prior to the closing of underground utility trenches and before the walls of the individual units were finished, thereby allowing for a much easier installation than would be required in a finished facility.

Comcast noted in its application that the Mews consists of 14 buildings and will include a total of 653 residential units as well as a clubhouse. Comcast alleged that the complex was still under construction, and indicated that, at the time of the petition, the trench to the public right-of-way was open and available for the connection of the cable plant. Comcast claimed it requested access from Toll Brothers, the alleged builder and owner of the Mews, and was denied or otherwise ignored. Specifically, Comcast requested formal access via a letter, dated October 15, 2004. Comcast claimed that Toll Brothers never responded. Comcast also noted that Toll Brothers indicated that broadband communications services were being supplied to the Mews through an uncertified satellite master antenna television ("SMATV") system that is affiliated with the builders.

Based upon this information, Comcast filed its application seeking emergent relief and a Board Order allowing for immediate approval to install plant during the construction phase.

Toll Brothers filed an opposition to that request, including an answer to the Verified Complaint as well as a copy of the letter sent by Toll Brothers in response to the letter seeking access sent by Comcast. In its letter, Toll Brothers noted that the actual owner/builder of the Mews is Toll Brothers Realty Trust, and also responded to the specific elements of the request for service. Specifically, the letter notes that the request for access from Comcast did not specify any particular building or buildings on the site, and included a form of access agreement that was unacceptable to Toll Brothers. Likewise, Toll Brothers noted that the \$1.00 offered was not "just compensation and failed to provide reasonable compensation for Comcast's impact to the project." Toll Brothers indicated that Comcast failed to provide proof of insurance and other indemnification protections, and, perhaps most notably, that the trenching for utility access took place not on November 18, 2004, but on October 18, 2004, and that as Comcast was involved in a number of meetings prior to that date, Comcast should have been aware of the schedule. Nevertheless, Toll Brothers indicated a willingness to discuss appropriate terms and conditions for access.

By Order dated January 13, 2005, the Board denied Comcast's motion, noting that Comcast was unable to satisfy the requirements for emergent relief, both because it had not yet received a request for service from a tenant and it was unable to sustain a showing of irreparable injury. The Board directed this matter be transmitted to the Office of Administrative Law as a contested case, to allow for the necessary development of the record, and, hopefully, to provide the parties the opportunity to reach a negotiated settlement. The matter was thereafter transmitted to Office of Administrative Law as a contested matter under N.J.A.C. 14:17-9.1 et seq. for initial disposition.

Following transmittal, the matter was assigned to Administrative Law Judge ("ALJ") John Schuster III. A pre-hearing conference was held on September 28, 2005, and evidentiary hearings were set for April 25, 2006 through April 27, 2006. On November 9, 2005, the parties engaged in settlement discussions before ALJ Schuster. Following the settlement conference, the parties continued to engage in settlement discussions and an exchange of information over a period of months. Their progress was monitored by ALJ Schuster through a series of status conferences conducted on November 22, 2005, December 14, 2005, January 11, 2006 and February 8, 2006.

On February 13, 2006, Comcast and Princeton Junction Apartments, LP, the Toll Brothers affiliate which owns or has control over the Mews Property, executed a Right of Entry and Services Agreement whereby Toll Brothers will allow Comcast access to the Mews property. That document purports to outline the conditions for access and is referenced in the Stipulation of Settlement completed on March 22, 2006 between Toll Brothers and Comcast.

On April 4, 2006, ALJ Schuster issued his Initial Decision finding that the Stipulation of Settlement was voluntarily agreed to by the parties, fully disposed of all issues in controversy and was consistent with the law. On that basis, the ALJ concluded that the settlement met the requirements of N.J.A.C. 1:1-19.1 and recommended its approval by the Board.

Upon review of the record, however, the Board notes that a major tenet of the parties' agreement is contained in the Right of Entry and Services Agreement which provides the terms of access to the Mews Property. The parties claim this agreement was confidential and did not append it to the Stipulation of Settlement, and its terms were not made a part of the record. The Board believes that the terms of access are an essential component to a full record before rendering any decision in the matter.

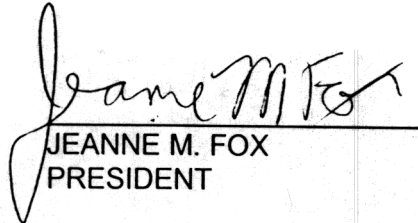
Under N.J.A.C. 1:1-19.1(a), where the parties wish to settle, and the agency head has not consented to the settlement, the parties must either disclose the full settlement terms in writing or must orally provide the terms to the ALJ. Here, the Board did not consent to the settlement,

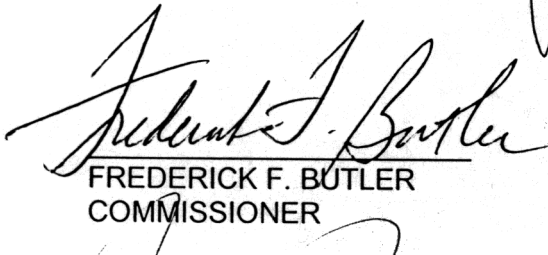
and thus the terms were required to be placed into the record. It appears that this did not occur. The primary terms of the Settlement are contained in the Right of Entry and Services Agreement, which appears to have neither been provided to the ALJ nor to the Board. The absence of the terms of the settlement from the record make it impossible for the Board to determine if the settlement is voluntary, consistent with the law and fully disposes of all issues in controversy. Accordingly, the Board is unable to accept the Initial Decision. Instead, the Board requires the terms of the Settlement to be placed into the record before any action can be taken by the Board.

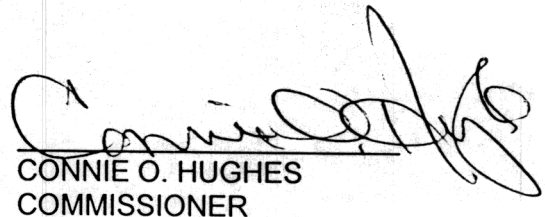
Based upon the foregoing, the Board HEREBY REJECTS the ALJ's Initial Decision and remands it for further fact finding or such other disposition as may be determined by the ALJ and the parties.

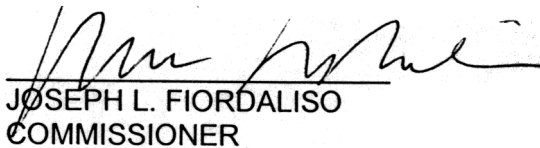
DATED: 5/17/06

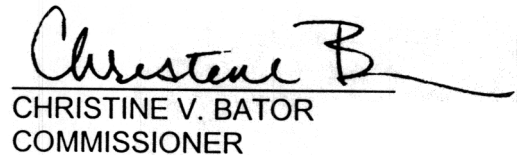
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER

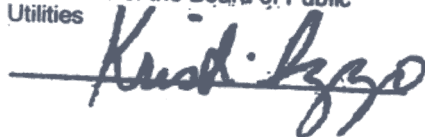

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF THE PETITION OF COMCAST OF CENTRAL NEW JERSEY, LLC
FOR ACCESS TO CERTAIN PREMISES KNOWN AS "MEWS AT PRINCETON
JUNCTION," LOCATED IN THE TOWNSHIP OF WEST WINDSOR,
COUNTY OF MERCER, STATE OF NEW JERSEY

DOCKET NO. CE04111461

SERVICE LIST

Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

William H. Furlong, Chief
Bureau of Inspection & Enforcement
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Larry Hodes
Bureau of Inspection & Enforcement
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Lawanda R. Gilbert, Esq.
Counsel's Office
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Richard P. De Angelis, Esq.
Stryker, Tams & Dill, LLP
Two Penn Plaza East
Newark, New Jersey 07105

James C. Meyer, Esq.
Riker, Danzig, Scherer, Hyland & Perretti, LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962-1981

Kenneth J. Sheehan
Deputy Attorney General
State of New Jersey, Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101



CF/WF

12:05

12:05

12:05

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
Quakerbridge Plaza, Building #9
Quakerbridge Road, PO Box 349
Trenton, New Jersey 08625-0049
609) 588-6584

SOUTH

Date: 3/3/06

Re: Initial Decisions for Receipt

Receipt of the following decisions from the Office of Administrative Law (as well as a copy of this form) is acknowledged as of the date indicated below:

OAL Docket No. CTV

Case Name

2852-05

Comcast & Central NJ

APR -4 PM 2:16

RECEIVED

OFFICE OF C.A.L.V.

PM 2:57

Office of Cable Television
Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

Date: _____

Office of Cable Television

FILED
JAN

PM 12: 3



RECEIVED

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CTV 2852-05

AGENCY DKT. NO. CE04111461

IN THE MATTER OF THE PETITION
OF COMCAST OF CENTRAL NEW JERSEY,
LLC FOR ACCESS TO CERTAIN PREMISES
KNOWN AS "MEWS AT PRINCETON
JUNCTION" LOCATED IN THE TOWNSHIP
OF WEST WINDSOR, COUNTY OF MERCER,
STATE OF NEW JERSEY.

06 APR 12 PM 2:57
N.J. OFFICE OF C.A.T.V.

Richard P. De Angelis, Jr., Esq., for Comcast of Central New Jersey LLC
petitioner (Stryker, Tams & Dill, attorneys)

James C. Meyer, Esq., for Toll Brothers Realty Trust, respondent (Riker, Danzig
Scherer, Hyland & Perretti, attorneys)

Record Closed: March 24, 2006

Decided: March 27, 2006

BEFORE JOHN SCHUSTER III, ALJ

This matter was transmitted to the Office of Administrative Law on May 11, 2005
for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and
N.J.S.A. 52:14F-1 to -13.

The parties conferenced this matter independently and with the undersigned on multiple occasions. They agreed to a settlement and prepared a Stipulation of Settlement (J-1) memorializing the terms thereof, which is attached and fully incorporated herein

have reviewed the record and the terms of settlement and **FIND:**

- 1 The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted modified or rejected by the BOARD OF PUBLIC UTILITIES, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10

March 27, 2006
DATE


JOHN SCHUSTER III, ALJ

Receipt Acknowledged:

DATE

BOARD OF PUBLIC UTILITIES

Mailed to Parties

DATE

OFFICE OF ADMINISTRATIVE LAW

/mh/jh

RECEIVED
MAIL ROOM
2006 APR PH 12:06
TUESDAY
APR 11
NEWARK, NJ

EXHIBITS

Joint Exhibit:

J-1 Stipulation of Settlement

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF ADMINISTRATIVE LAW

2006 MAR 24 A 10:43

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE PETITION OF
COMCAST OF CENTRAL JERSEY, LLC.
FOR ACCESS TO CERTAIN PREMISES
KNOWN AS THE "MEWS AT PRINCETON
JUNCTION," LOCATED IN THE
TOWNSHIP OF WEST WINDSOR,
COUNTY OF MERCER, STATE OF NEW
JERSEY

BPU Docket No. C2004-16147
OAL Docket No. CTV 02852-2005S

STIPULATION OF SETTLEMENT

THIS STIPULATION OF SETTLEMENT ("Stipulation") is made as of
this 22nd day of March, 2006, by and among Comcast of Central New Jersey, LLC
("Comcast" and Toll Brothers Realty Trust ("Toll"))

On November 24, 2004 Petitioner Comcast, a cable television company
subject to the jurisdiction of the Office of Cable Television ("OCTV") and the Board of
Public Utilities "Board" pursuant to N.J.S.A. 48:5A- et. seq., filed a Verified
Petition with the Board ("Petition" pursuant to N.J.S.A. 48:5A-49 and N.J.A.C. 4:18-
4.5 for access to a certain multi-family residential property including 635 apartment
units known as "Mews at Princeton Junction," located at 900 Wessex Place in the
Township of West Windsor, New Jersey (hereafter the "Mews Property") On
December 9, 2004, respondent Toll filed its Answer, Affirmative Defenses, and Request
for Contested Case Hearing.

On or about April 25, 2005, the matter was transmitted to the Office of
Administrative Law ("OAL") as a contested case, whereupon it was assigned to the
Honorable Administrative Law Judge ("ALJ") John Schuster.

On November 9, 2005, Comcast and Toll conducted a settlement conference on November 9, 2005 at the OAL. Following the settlement conference, Comcast and Toll continued to engage in settlement discussions and information exchanges over a period of months. During this period, ALJ Schuster conducted status conferences on November 22, 2005, December 14, 2005, January 3, 2006, and February 8, 2006. Based on these discussions and their own analyses, the Signatory Parties concluded that this matter should be settled. Accordingly, rather than undertaking discovery, filing testimony, and preparing for hearings, the signatory parties negotiated the settlement set forth in this Stipulation.

Given the intention of the Signatory Parties to reasonably, fully and finally resolve the matter set forth herein, and a consideration of the recitals and mutual promises and covenants set forth herein, the Signatory Parties, having given due consideration to the filed materials and information exchanged and the various issues addressed herein, DO HEREBY STIPULATE AND AGREE AS FOLLOWS:

Access. Toll shall cause access to the Mews Property to be provided to Comcast pursuant to the Right of Entry and Services Agreement ("Agreement") dated February 3, 2006 between Comcast and Princeton Junction Apartments, LP, the Toll affiliate which owns or has control over the Mews Property. The Agreement constitutes proprietary and competitively sensitive Confidential Information of the Signatory Parties, and it therefore is not attached to this Stipulation.

2 Effective Date. This Stipulation shall become effective on the date the Agreement is executed by both parties.

3 Conclusion of Proceeding. The Signatory parties agree that, upon approval of this Stipulation by ALJ Schuster, the OAL Clerk shall return the matter to the Board for appropriate disposition

4 Reasonableness of Stipulation.

A. Reasonable Result. This Stipulation is the result of a negotiation process with concessions by all Signatory Parties. The Stipulation will allow Comcast to access the Mews property and to provide service therein residents to receive Comcast service, under the terms and conditions in the Agreement.

B. Support For the Stipulation. The Stipulation is supported by the agreement of the Signatory Parties. In addition, the pleadings and discussions before ALJ Schuster provide support for this Stipulation. After extensive review of the filings and information exchanged in this matter, the Signatory Parties are executing this Stipulation to provide for a just, reasonable and efficient resolution of the proceeding, while avoiding litigation costs and delay in obtaining a final determination.

C. Voluntariness. The Signatory Parties agree that Stipulation is voluntary, consistent with law, and fully dispositive of the issues addressed herein.

5 Expeditious Approval. The Signatory Parties agree that the ALJ should expeditiously issue an Order that adopts this Stipulation. Each Signatory Party agrees to use its best efforts to ensure that the Stipulation is submitted in a timely fashion and to urge the ALJ and the Board to issue their approval of the Stipulation without modification or condition.

6 Waiver of Rights of Appeal Each Signatory Party specifically waives any right it may have to seek reconsideration of or to appeal an order that approves the Stipulation in the manner provided for herein without modification

7 Rights Upon Disapproval or Modification This Stipulation contains mutually balancing and interdependent provisions, and is intended to be accepted and approved in its entirety to fully and finally resolve this proceeding. This Stipulation is an integral settlement and the various parts hereof are not severable without upsetting the balance of agreements and compromises achieved among the Signatory Parties. In the event the Stipulation is disapproved as a whole, it shall be null and void. In the event that any particular aspect of this Stipulation is not accepted and approved in its entirety, without modification, or is modified by an agency or court of competent jurisdiction: (i) the Signatory Parties are not waiving any legal or procedural rights, arguments or claims they may have before the ALJ, the Board or in any forum, and (ii) this Stipulation shall, at the option and discretion of any Signatory Party aggrieved thereby, exercised by written notice to the other Signatory Parties within ten days after receipt of any such adverse decision, be null and void in which case the Signatory Parties shall be placed in the same position that they were in immediately prior to its execution

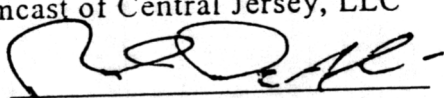
8 Party Reservations This Stipulation and the Agreement represent a negotiated compromise resolution that has been made for the purpose of resolving the above captioned matter involving the Mews Property. Although binding on the Signatory Parties with respect to the issues resolved herein in this proceeding, this Stipulation and the Agreement, in total or by specific item, is in no way binding upon the Signatory Parties (or non-signatories) and is not to be considered or cited as

precedent in favor of or against their respective positions on any issue in any other proceeding, except to enforce the terms of the Stipulation and the Agreement. The Signatory Parties agree that the resolution of the issues herein and in the Agreement shall apply only to the above-captioned case and that any similar future cases shall be reviewed by the OAL and Board on an individual basis. This Stipulation and the Agreement are without prejudice to the positions of the respective Signatory Parties or of the Board or OAL with respect to any future cases or other proceedings involving Comcast or Toll, or their affiliates, except as specifically set forth herein.

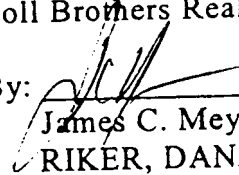
9 Captions. The subject headings of the sections of this Stipulation are inserted solely for the purpose of convenient reference and are not intended to, nor shall they, affect the meaning of any provision of this Stipulation.

10 Governing Law. This Stipulation shall be governed and construed in accordance with the laws of the State of New Jersey.

Execution. This Stipulation may be executed in one or more counterparts. Each party has caused its duly authorized representative to execute below and deliver this Stipulation.

Comcast of Central Jersey, LLC
By: 
Richard P. De Angelis, Jr.
STRYKER, TAMS & DILL LLP

Dated: 3/22/06

Toll Brothers Realty Trust
By: 
James C. Meyer
RIKER, DANZIG,
SCHERER, HYLAND &
PERRETTI, LLP

Dated: 3/21/06

2006 APR -4 PM 12:06

RECEIVED
MAR 22 2006